

90-07

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9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
10 REGION 9

11 In the Matter of:

12 Builder's Hardware Finishers, Inc.,
1846 Sichel Street, Los Angeles, CA;

13 Bradley Lee Herman and Howard Lando
14 Herman
15 Respondents

U.S. EPA Docket
No. 90-07

16 Proceeding under Sections 104, 106 and
17 122 of the Comprehensive Environmental
Response, Compensation and Liability Act)
of 1980, as amended by the Superfund
18 Amendments and Reauthorization Act of
1986, (42 U.S.C. §§ 9604, 9606, 9622)

19 ADMINISTRATIVE CONSENT ORDER
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1 **I. Introduction and Jurisdiction**

2 A. This Administrative Order on Consent ("Order") is en-
3 tered into voluntarily by the United States Environmental Protec-
4 tion Agency ("EPA") and Bradley Lee Herman and Howard Lando Her-
5 man ("Respondents").

6 B. This Order is issued pursuant to the Comprehensive En-
7 vironmental Response, Compensation and Liability Act of 1980, as
8 amended by the Superfund Amendments and Reauthorization Act of
9 1986, 42 U.S.C. §9601, et seq. ("CERCLA"), by authority delegated
10 to the Administrator of the EPA and redelegated to the EPA
11 Regions.

12 C. The Director of the Hazardous Waste Management Division,
13 EPA Region 9 (the "Director"), has determined that there may be
14 an imminent and substantial endangerment to the public health,
15 welfare and the environment because of the release and threatened
16 release of hazardous substances at and from the Builders'
17 Hardware Finishers, Inc. Site, located at 1846 Sichel Street, Los
18 Angeles, California (the "Facility" or the "Site"). In entering
19 into this Order, the mutual objective of EPA and Respondents is
20 to conduct the removal activities prescribed herein to protect
21 public health and welfare and the environment.

22 D. Respondents agree to undertake all actions required by
23 this Order. Respondents agree to all of the terms and conditions
24 of this Order. Respondents agree that in any action by EPA to
25 enforce this Order, Respondents will not contest: (1) the
26 authority or jurisdiction of the Director to issue this Order,
27 nor (2) any of the terms or conditions of this Order.

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1 E. EPA has designated an On-Scene-Coordinator ("OSC") for
2 the Facility, pursuant to 40 C.F.R. Part 300, published at 5C
3 Fed. Reg. 47912 (November 20, 1985).

4 F. Respondents reserve the right to contest any and all
5 legal or equitable liability under any federal, state, or local
6 statute, regulation, ordinance, or common law for any response
7 costs, damages or claims arising out of conditions at or arising
8 from the Facility other than as expressly agreed to herein relat-
9 ing to the cleanup of the remaining contamination at the
10 Facility.

11 G. By entering into this Order, Respondents do not admit
12 the truth of any statements contained in the Findings of Fact or
13 Conclusions of Law, or the Determinations made therein, nor do
14 Respondents admit any liability or admit any issues of law or
15 fact or any responsibility for the alleged release or threatened
16 release of any hazardous substances into the environment.

17 H. Nothing contained in paragraphs F and G above shall
18 relieve Respondents from their obligation to perform the work and
19 to do those things as provided for in this Order.

20 I. This Order is not intended to be used or to be admis-
21 sible in any proceeding brought by any third party in relation to
22 the Facility.

23 II. Findings of Fact

24 BACKGROUND

25 A. Builder's Hardware Finishers, Inc. ("BHFI") operated an
26 electroplating establishment at the Facility. This operation
27 utilized hazardous substances characteristic of the plating in-
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dustry, e.g., inorganic acids and bases, cyanide salts, degreasing agents and oxidizing materials. On May 23, 1988, a fire destroyed BHFI's electroplating operation. Local, state, and federal agencies responded to the emergency. During the next two months, EPA recycled and disposed of the chemical contaminants remaining on the Site.

B. EPA then implemented a building and property sampling strategy intended to demonstrate the presence/non-presence of chemical contamination. No attempt was made to perform a complete characterization of contamination zones; instead, the effort was meant to determine if subsurface and building contamination existed. Sample locations were selected from areas that could be contaminated with hazardous substances. The sampling indicated residual heavy metal contamination. Part of the cinderblock building was identified as contaminated. Respondents requested that they be afforded the opportunity to make their own arrangements for the removal of residual contamination at the Facility.

C. Respondents are owners of the Facility and claim that they became owners of the Facility by reason of inheritance and testamentary succession. Respondents further claim that they never owned or operated BHFI, and that they did not generate any of the hazardous waste which presently exists at the Facility.

ENDANGERMENT

D. The Facility, situated in a mixed industrial and residential zone, occupies an 8000 square foot lot. A cinderblock-walled building previously housed a small office

space and the plating, buffing and finishing areas. The back lot behind the building contained a loading dock and was also used for chemical, waste and equipment storage. A residence is immediately adjacent to the Facility on the south side on a zero lot line. The north side of the building, where visible contamination of the wall has been identified, is immediately adjacent to a public alley, and a public school is two blocks north of the Facility.

E. The May 23, 1988 fire damaged containers holding acids and cyanides. The potential existed for a release of hydrogen cyanide gas due to the conditions at the Facility after the fire. EPA initiated a removal action, pursuant to CERCLA Section 104, 42 U.S.C. § 9604, to mitigate the imminent and substantial endangerment to the public health and the environment caused by the release and threatened release of hazardous substances, contaminants or pollutants from the Facility. Sampling performed after EPA had completed most of the cleanup work indicated residual heavy metal contamination, as more fully described below. Contamination of part of the cinderblock building was identified, as described below.

F. After the initial cleanup effort, EPA conducted verification sampling at the Facility. This sampling effort was intended to demonstrate the presence or absence of chemical contamination. Sample locations were selected from areas that were most likely to contain hazardous substances. The purpose of the sampling was to determine if subsurface and building contamination existed. A total of twenty (20) samples were collected and

1 submitted for analysis of EP Toxicity Metals, total cyanide and
2 the California Assessment Manual ("CAM") metals Soluble Threshold
3 Limit Concentrations ("STLC's").

4 G. The results indicated exceedences of the STLC's and EP
5 Toxicity at various sample points. The following Table presents
6 exceedences at specified locations at the Facility:

7			
8	1. W-1 near the etching/	nickel: 23 mg/l	CAM STLC 20 mg/l
9	staining of the north wall		
10	2. B-5 beneath cracks and	lead: 8 mg/l	CAM STLC 5 mg/l
11	etching of concrete within		
12	the building		
13	3. S-2 broken concrete/	copper: 42 mg/l	CAM STLC 25 mg/l
14	asphalt leading into alley		
15	drainage by the back gate		

16 H. There is substantial visible contamination of the out-
17 side of the building along the alley in the vicinity of sample
18 point W-1. The exceedences of the copper and nickel STLC's indi-
19 cate that further characterization and cleanup of residual con-
20 tamination at the Facility is required.

21 I. Lead, nickel and copper are hazardous substances. Addi-
22 tionally, soluble copper salts can be toxic irritants and aller-
23 gens. Nickel is an irritant and allergen and can be hazardous if
24 ingested or inhaled. Chronic exposure is more dangerous, nickel
25 being a moderate inhalative toxin with prolonged dosing. The
26 presence of these hazardous substances at the levels and loca-
27 tions presented in Paragraph G of this Section constitutes an im-
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1 minent and substantial endangerment due to the potential for in-
2 halation and ingestion of copper, nickel, and lead. Respondents
3 believe that, absent decomposition of the wall, there is no
4 potential for inhalation of copper, nickel or lead.

5 6 III. Conclusions of Law

7 A. Respondents are "persons" as defined in Section 101(21)
8 of CERCLA, 42 U.S.C. §9601(21).

9 B. The property located at 1846 Sichel Street, Los Angeles,
10 California is a "facility" as defined in Section 101(9) of
11 CERCLA, 42 U.S.C. §9601(9).

12 C. Copper, nickel and lead are "hazardous substances" as
13 defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14 D. The presence of hazardous substances at the Facility and
15 the potential for those substances to be inhaled or ingested con-
16 stitutes an actual or threatened "release" of hazardous sub-
17 stances into the environment as defined in Section 101(22) of
18 CERCLA, 42 U.S.C. §9601(22).

19 E. Respondents are "responsible parties" as defined in Sec-
20 tion 107(a) of CERCLA, 42 U.S.C. §9607(a). Respondents admit
21 liability under CERCLA as owners of the property. Respondents
22 claim that they are successor owners of the property. Respon-
23 dents do not admit to being an operator or generator of any waste
24 at the Facility.

25 F. Respondents are jointly and severally liable for con-
26 ducting the actions ordered herein.

1 **IV. Determinations**

2 Based on the Findings of Fact and Conclusions of Law, the
3 Director, Hazardous Waste Management Division, EPA Region 9, has
4 made the following determinations:

5 A. The releases or threatened release of hazardous sub-
6 stances and pollutants or contaminants from the Facility may
7 present an imminent and substantial endangerment to the public
8 health or welfare or the environment.

9 B. The actions required by this Order are necessary to
10 abate the imminent and substantial risk of harm to human health
11 and the environment at the Facility.

12 C. The removal measures required by this Order, if per-
13 formed in full compliance with the requirements of this Order,
14 are consistent with the National Contingency Plan, 40 Code of
15 Federal Regulations, Part 300.

16 **V. Work To Be Performed**

17 **A. General Provisions**

18 1. All response work performed pursuant to this Order
19 shall be under the direction and supervision of a qualified
20 professional engineer. Within 15 days prior to initiation of any
21 removal work, Respondents shall notify EPA in writing of the
22 name, title, and qualifications of such engineer and of any con-
23 tractors and/or subcontractors to be used in carrying out the
24 terms of this Order. The qualifications of the persons undertak-
25 ing the work for Respondents shall be subject to EPA's review,
26 for verification that such persons meet the minimum technical
27 background and experience. If EPA disapproves in writing of the
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1 technical qualifications of any person(s), Respondents shall
2 notify EPA within 15 days of the written notice of the identity
3 and qualifications of the replacement(s). If EPA subsequently
4 disapproves of the replacement(s), EPA may, as is its right under
5 CERCLA and the NCP, conduct the removal and seek reimbursement
6 for costs from Respondents.

7 2. All work shall be conducted in accordance with
8 CERCLA, the NCP and current EPA Guidance and policy.

9 3. Any plans, schedules or Scope of Work required by
10 this Order are, upon approval by EPA, incorporated into this Or-
11 der. A violation of any such plan, schedule, or Scope of Work
12 shall constitute noncompliance with this Order and will subject
13 Respondents to stipulated penalties in accordance with Section
14 XIV of this Order.

15 4. For the purposes of this Order, "day" means calen-
16 dar day unless otherwise specified in this Order.

17 5. In the event of unanticipated or changed cir-
18 cumstances at the Facility, Respondents shall notify EPA within
19 24 hours of the discovery of the unanticipated or changed cir-
20 cumstances.

21 6. EPA may determine that additional tasks, including
22 remedial investigation work, engineering evaluation, interim
23 response measures or tasks are necessary. Respondents agree to
24 implement any additional tasks which EPA determines are neces-
25 sary. Respondents shall complete the additional work in accor-
26 dance with the standards, specifications, requirements, and
27 schedules determined or approved by EPA.

1 **B. Work and Deliverables**

2 Based upon the Findings of Fact, Conclusions of Law and
3 Determinations, EPA hereby orders Respondents, and Respondents
4 agree, to implement the following measures at the direction of
5 EPA's On-Scene Coordinator:

6 1. Within fifteen calendar days of the effective date
7 of this Order, Respondents shall submit to EPA for written ap-
8 proval a Scope of Work that addresses the following items and in-
9 cludes the following schedule and deliverables:

10 a. A complete characterization report of the con-
11 tamination zones, with all sampling results, to be submitted to
12 EPA within thirty calendar days of EPA's written approval of the
13 Scope of Work.

14 b. Development of a final cleanup plan (including an
15 implementation schedule) for known contamination areas and any
16 others identified by EPA after review of the complete charac-
17 terization. The plan shall contain provisions for site safety
18 measures to protect on-site workers and the surrounding community
19 during clean-up activities. The final cleanup plan shall be sub-
20 mitted to EPA within thirty calendar days of EPA's receipt of
21 the sampling results described in paragraph B.1.a of this Sec-
22 tion.

23 2. Respondents shall implement the Scope of Work
24 described in paragraph A above, within 25 calendar days of EPA's
25 written approval of that document.

26
27 3. Within thirty calendar days of completion of the
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1 final cleanup, Respondents shall submit to EPA a report describ-
2 ing all of the removal activities undertaken pursuant to this Or-
3 der.

4 It is further AGREED and ORDERED:

5 VI. Compliance With Other Laws

6 A. Respondents shall comply with all federal, state and lo-
7 cal laws and regulations in carrying out the terms of this Order.
8 All hazardous substances removed from the Facility must be
9 handled in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C.
10 § 9621(d)(3).

11 B. Respondents shall comply with all applicable require-
12 ments of the Occupational Safety and Health Act of 1970, includ-
13 ing the regulations found at 29 C.F.R. part 1910, et. seq.

14 VII. On-Scene Coordinator

15 EPA has appointed an On-Scene Coordinator ("OSC") for the
16 Facility who has the authority vested in the OSC by 40 C.F.R.
17 Part 300, et seq. The OSC for the Facility for the purposes of
18 this Order is:

19 Christopher C. Waden
20 United States Environmental Protection Agency, Region 9
21 215 Fremont Street
22 San Francisco, California 94105
23 (415) 768-1225

24 VIII. Submittals

25 A. All submittals and notifications to EPA required by this
26 Order shall be made to the OSC, Christopher C. Waden, at the ad-
27 dress provided in Section VII.

28 B. All approvals and decisions of EPA made regarding the

1 submittals and any modifications to this Order shall be communi-
2 cated to Respondents by the Assistant Director or the OSC. No
3 informal advice, guidance, suggestions, or comments by EPA
4 regarding reports, plans, specifications, schedules, or any other
5 matter will relieve Respondents of their obligations to carry out
6 the requirements of this Order based upon written approvals, as
7 provided in Section V.

8 IX. Site Access

9 Respondents shall provide EPA employees and other represen-
10 tatives with complete access to the Facility at all times. Noth-
11 ing in this Order limits any access rights that EPA or other
12 agencies have pursuant to law.

13 X. Sampling, Access, and Data Availability

14 A. Respondents shall provide EPA all information regarding
15 hazardous substances at, or released from, the Facility, includ-
16 ing but not limited to:

17 1. The results and Quality Assurance/Quality Control
18 (QA/QC) documentation of all sampling and/or tests or other tech-
19 nical data generated by Respondents or on Respondent's behalf
20 with regard to soil, ground water, surface water, or air con-
21 tamination by hazardous substances, pollutants, or contaminants
22 at the Facility;

23 2. Previous studies or reports;

24 3. Communications between Respondents and local, state
25 or other federal authorities; and

26
27 4. Permits from local, state or federal authorities
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1 regarding hazardous substance use or contamination at the
2 Facility.

3 B. At the request of EPA, Respondents shall provide split
4 or duplicate samples to EPA and/or its authorized representatives
5 of any samples collected by Respondents or on Respondent's be-
6 half. Respondents shall notify EPA of any planned sample collec-
7 tion activity at least five days prior to the planned sample col-
8 lection activity.

9 C. Respondents shall use quality assurance, quality con-
10 trol, and chain of custody procedures described in the EPA
11 "Removal Program: Quality Assurance and Quality Control Interim
12 Guidance" (OSWER Directive 9360.4-01, February 2, 1989), and any
13 EPA updates or revisions to these guidances, while conducting all
14 sample collection and analysis activities required by this Order.
15 Respondents shall consult with EPA in planning for, and prior to,
16 all sampling and analysis.

17 D. Respondents shall permit EPA and/or its authorized rep-
18 resentatives to inspect and copy all records, documents, and
19 other writings, including all sampling and monitoring data, that
20 in any way concern soil, ground water, surface water or air con-
21 tamination at the Facility. Nothing in this Order shall be in-
22 terpreted as limiting EPA's inspection authority under federal
23 law.

24 E. Respondents may assert a confidentiality claim, covering
25 part or all of the information requested by this Order pursuant
26 to 40 C.F.R. § 2.203(b). Respondents agree that analytical data
27 and data covered by Section 104(e)(7)(F) of CERCLA (42 U.S.C. §
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1 9604(e)(7)(F)) shall not be claimed as confidential, and shall be
2 provided to EPA by Respondents. Information determined to be
3 confidential by EPA will be afforded the protection specified in
4 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the
5 information when it is submitted to EPA, it may be made available
6 to the public by EPA without further notice to Respondents.

7 F. If, at any time during the removal activities, Respon-
8 dents become aware of the need for additional data, Respondents
9 shall have an affirmative obligation to submit to the EPA OSC
10 within 10 days a memorandum describing the need for additional
11 data.

12 G. All data, factual information, and documents submitted
13 by Respondents to EPA pursuant to this Order shall be subject to
14 public inspection. In addition, the administrative record shall
15 be subject to public inspection.

16 17 XI. Endangerment During Implementation

18 The Director may determine that acts or circumstances
19 (whether related to or unrelated to this Order) may endanger
20 human health, welfare or the environment and may order Respon-
21 dents to stop further implementation of this Order until the en-
22 dangerment is abated.

23 XII. Indemnification

24 Respondents agree to indemnify and hold the United States
25 Government, its agencies, departments, agents and employees harm-
26 less for any and all claims or causes of action arising from or
27 on account of the acts or omissions of Respondents, their
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1 employees, agents, receivers, successors, assignees, or any per-
2 sons, including but not limited to corporations, firms, and con-
3 tractors, in carrying out this Order. For the purposes of this
4 Order, the United States Government is not a party to any con-
5 tract entered into by Respondents.

6 XIII. Record Preservation

7 Respondents agree that they shall preserve, during the pen-
8 dency of this Order and for a minimum of three years after the
9 termination of this Order, a central depository of the records
10 and documents required to be prepared under this Order. Respon-
11 dents shall acquire and retain copies of all documents that re-
12 late to the site, including but not limited to documents that re-
13 late to hazardous waste contamination, and are in the possession
14 of its employees, agents, accountants, contractors, or attorneys.
15 After this three year period, Respondents shall notify EPA at
16 least 30 days before the documents are scheduled to be destroyed.
17 If EPA requests that some or all such documents should be saved,
18 Respondents shall, at no cost to EPA, provide EPA with the docu-
19 ments or copies of the documents.

20 XIV. Dispute Resolution

21 If Respondents object to any EPA decision regarding the ap-
22 proval or disapproval of submittals, Respondents shall notify EPA
23 in writing of their objections within fourteen calendar days of
24 receipt of the decision. EPA and Respondents will then have an
25 additional fourteen calendar days from receipt by EPA of the
26 notification of objection to reach agreement. At the end of the
27 fourteen day discussion period, EPA shall provide a written
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1 statement of its decision from the Hazardous Waste Management
2 Division Director to Respondents. Respondents shall then imple-
3 ment EPA's decision. Use of the dispute resolution provision
4 will not relieve Respondents' duty to complete the other tasks in
5 a timely manner in accordance with the schedule. This dispute
6 resolution provision or EPA's decision pursuant to this provision
7 does not grant or imply jurisdiction to any court to review EPA's
8 decisions.

9 XV. Stipulated Penalties

10 A. Except with respect to any extensions allowed by EPA in
11 writing, or excused by the provisions of Section XVI (Force
12 Majeure), for each day in which Respondents fail to submit a
13 timely or adequate report or document, or in which Respondents
14 otherwise fail to achieve the requirements of this Order, Respon-
15 dents agree to pay the sum set forth below as stipulated
16 penalties. These penalties shall accrue commencing upon the ear-
17 liest of the following occurrences: Respondents' failure to sub-
18 mit a timely or adequate report or document; two working days
19 after Respondents' receipt of a written determination of disap-
20 proval of a submittal; two working days after Respondents are
21 notified of their failure to meet the schedule specified or
22 modified by EPA in this Order; or two working days after Respon-
23 dents' receipt of written notice from EPA that a violation of
24 this Consent Order has occurred. These penalties are not subject
25 to Dispute Resolution (Section XII). Dispute Resolution shall
26 not stay the accrual of these stipulated penalties.

1 B. Stipulated penalties shall accrue in accordance with the
2 following schedule:

- 3 1. For the first seven days of violation - \$500.00 per
4 day per violation.
5 2. For each and every day after the seventh day of
6 violation - \$1,000.00.

7 C. Respondents' payment of stipulated penalties shall be
8 due upon demand by the Director, Hazardous Waste Management Divi-
9 sion, U.S. EPA, Region 9, by certified check made payable to the
10 United States Treasury and addressed to:

11 U.S. Environmental Protection Agency
12 Region 9, Attn: Superfund Accounting
13 P.O. Box 360863M
14 Pittsburgh, PA 15251

15 Respondents shall send a cover letter with any check and the let-
16 ter shall identify the Facility by name and make reference to
17 this Consent Order. Respondents shall send simultaneously to the
18 EPA OSC a notification of any penalty paid, including a photocopy
19 of the check.

20 D. The stipulated penalties provisions do not preclude EPA
21 from pursuing any other remedies or sanctions which are available
22 to EPA because of Respondents' failure to comply with this Order.

23 E. Respondents are jointly and severally liable for the
24 payment of stipulated penalties accruing under this Order.

25 XVI. Force Majeure

26 A. If an event occurs which causes delay in the achievement
27 of the requirements of this Order, Respondents shall have the
28 burden of proving that the delay was caused by circumstances en-
tirely beyond the control of Respondents, their contractors, and

1 agents and that cannot be overcome by their due diligence.
2 Economic hardship, normal inclement weather, and increased costs
3 of performance shall not be considered events beyond the control
4 of Respondents, their contractors, and agents and shall not trig-
5 ger the force majeure clause. In the event of a force majeure,
6 the time for performance of the activity delayed by the force
7 majeure shall be extended for the time period necessitated by the
8 delay attributable to the force majeure. The time for perfor-
9 mance of any activity dependent on the delayed activity shall be
10 similarly extended, except to the extent that the dependent ac-
11 tivity can be implemented in a shorter time. EPA shall determine
12 whether subsequent requirements are to be delayed and the time
13 period granted for any delay. Respondents shall adopt all
14 reasonable measures to avoid or minimize any delay caused by a
15 force majeure.

16 B. When an event occurs or has occurred that may delay or
17 prevent the performance of any obligation under this Consent Or-
18 der, which Respondents believe is due to force majeure, Respon-
19 dents shall notify by telephone the EPA OSC, or, in his absence,
20 the Assistant Director of the Hazardous Waste Management Division
21 of EPA, Region 9, within 24 hours of the commencement of such
22 event. Oral notification shall be followed by written notifica-
23 tion, made within seven business days of when Respondents knew or
24 should have known of the event causing the delay or anticipated
25 delay. The written notification shall fully describe: the
26 reasons for the delay; the reasons the delay is entirely beyond
27 the control of Respondents, their contractors, and agents; the
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1 anticipated duration of the delay; actions taken or to be taken
2 to prevent or minimize the delay; a schedule for implementation
3 of any measures to be taken to mitigate the effect of the delay;
4 and any aspects of the event which may cause or contribute to an
5 endangerment to public health, welfare, or the environment.

6 C. The failure of Respondents to comply with the force
7 majeure notice requirements will be deemed an automatic forfei-
8 ture of their right to request a delay.

9 D. If EPA and Respondents cannot agree that any delay in
10 compliance with the requirements of this Order has been or will
11 be caused by circumstances entirely beyond the control of Respon-
12 dents, their contractors, and agents, or on the duration of any
13 delay necessitated by a force majeure event, the dispute shall be
14 resolved according to the dispute resolution provisions in Sec-
15 tion XIV. Respondents shall have the burden of proving by clear
16 and convincing evidence: that the delay was caused by cir-
17 cumstances entirely beyond the control of Respondents, their con-
18 tractors, and agents; that reasonable measures were taken to
19
20 avoid or minimize delay; and the necessity of the duration of the
21 delay.

22 XVII. Reservation and Waiver of Rights

23 A. EPA reserves the right to take any enforcement action
24 pursuant to CERCLA and/or any other legal authority, including
25 but not limited to the right to seek past and future response
26 costs and injunctive relief. EPA also reserves the right to seek
27 monetary penalties and punitive damages for any civil or criminal
28

1 violation of law or this Order. The parties agree that Respon-
2 dents' performance of the work required by this Order does not
3 reduce any liability they may have for past or future response
4 costs incurred by EPA in connection with the Facility. EPA
5 specifically reserves the right, at any stage in the removal, to
6 bring an action against Respondents under Section 107 of CERCLA
7 for recovery of all past response costs incurred by the United
8 States in connection with the Facility and any costs incurred by
9 the United States in the future in connection with the Facility.

10 B. Respondents agree not to make any claims for reimburse-
11 ment under CERCLA Sections 106, 111, or 112, 42 U.S.C. §§ 9606,
12 9611, or 9612.

13 C. Nothing in this Order shall constitute or be construed
14 as a release from any claim, cause of action or demand in law or
15 equity against a person, firm, partnership, subsidiary or cor-
16 poration not a signatory to this Order for any liability it may
17 have arising out of or relating in any way to the Facility.

18 XVIII. Reimbursement of Response and Oversight Costs

19 Within one year of termination of this Order, EPA will sub-
20 mit to Respondents documentation for all response and oversight
21 costs incurred by the U.S. Government with respect to this Con-
22 sent Order. EPA's Agency Financial Management System summary
23 data (SPUR Reports) shall serve as the documentation for payment
24 demands. EPA will also provide a summary accounting of its in-
25 direct and interest cost calculations. Respondents shall, within
26 30 calendar days of receipt of the accounting, remit a check for
27 the full amount of those costs payable to the Hazardous Substance
28

1 Response Trust Fund. Respondents shall send a cover letter with
2 the check. The letter shall identify the Facility by name, EPA
3 Identification Number, and make reference to this Order.

4 The check with the accompanying letter should be addressed
5 to:

6 U.S. Environmental Protection Agency - Region 9
7 ATTN: Superfund Accounting
8 P.O. Box 360863M
Pittsburgh, PA 15251

9 A copy of the transmittal letter shall be sent simul-
10 taneously to the EPA OSC and to Geoffrey R. Kors, Assistant
11 Regional Counsel. EPA reserves the right to bring an action
12 against Respondents pursuant to Section 107 of CERCLA, 42 U.S.C.
13 § 9607, for recovery of all response and oversight costs incurred
14 by the United States related to this Order and not reimbursed by
15 Respondents, as well as any other unreimbursed past and future
16 costs incurred by the United States not excluded by this Order,
17 in connection with response activities conducted pursuant to
18 CERCLA at the Site.

19 XIX. Other Claims

20 A. This Order does not release Respondents from any claim,
21 cause of action or demand in law or equity.

22 B. In entering into this Order, Respondents waive any right
23 to seek reimbursement or present any claim under Sections 106,
24 111, 112 of CERCLA, 42 U.S.C. §§ 9606, 9611, 9612, for any work
25 performed pursuant to this Order and any modifications thereto.

26 C. Respondents shall bear their own attorneys fees and
27 costs with respect to all matters associated with this Order.
28

1
2 **XX. Parties Bound**

3 A. This Order shall apply to and be binding upon the
4 Respondents, their agents, employees, contractors, successors,
5 and assigns.

6 B. Respondents shall provide a copy of this Order to all
7 contractors, subcontractors, laboratories and consultants
8 retained to conduct any portion of the work required by this Or-
9 der, within five days of retaining any such contractor, sub-
10 contractor, laboratory or consultant or within five days of the
11 effective date of this Order, whichever is later. Notwithstand-
12 ing the terms of any contract, Respondents are responsible for
13 compliance with this Order and for ensuring that its contractors
14 and agents comply with this Order.

15 C. The signatories to this Order certify that they are
16 authorized to execute and legally bind the parties they represent
17 to this Order.

18 D. Respondents shall provide a copy of this Order to any
19 subsequent owner(s) or successor(s) before ownership rights are
20 transferred.

21 **XXI. Notice to State**

22 Notice of the issuance of this Order has been given to the
23 State of California.

24 **XXII. Effective Date**

25 In consideration of the communications between Respondents
26 and EPA prior to the issuance of this Order concerning its terms,
27 Respondents agree that there is no need for a settlement con-
28

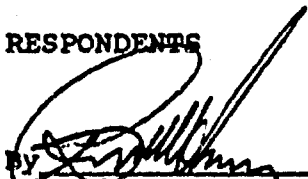
1 ference prior to the effective date of this Order. The Parties
2 agree that this Order is effective on the date Respondents
3 receive the fully executed Order.

4 XXIII. Termination and Satisfaction


5 The provisions of the Order shall be deemed satisfied upon
6 Respondents' receipt of written notice from EPA that Respondents
7 have demonstrated, to the satisfaction of EPA, that all of the
8 terms of this Order, including any additional tasks which EPA has
9 determined to be necessary, have been completed.

10
11 IT IS SO AGREED AND ORDERED:

12
13 RESPONDENTS

14 
15 By Bradley L. Herman
16 Bradley L. Herman

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

17 By 
18 Jeff Zelickson
19 Director, Hazardous Waste
20 Management Division

21 Date February 5, 1990

22 Date 1-26-90

23 By 
24 Howard L. Herman

25 Date Feb 5, 1990
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27 ///

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